

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
21st JUDICIAL DISTRICT, LEWIS COUNTY**

KEVIN P. LAVENDER, IN HIS)
OFFICIAL CAPACITY AS)
COMMISSIONER-IN-POSSESSION OF)
SENTINEL TRUST COMPANY AND)
RECEIVERSHIP MANAGEMENT, INC.,)
RECEIVER OF SENTINEL TRUST COMPANY)

Plaintiffs,)

v.)

DANNY N. BATES, CLIFTON TODD BATES,)
HOWARD H. COCHRAN, GARY L. O'BRIEN,)
DEANNA JUNE BATES and SENTINEL)
SERVICES CORPORATION,)

Defendants.)

No. 4980

FILED _____
AT 4:46 O'CLOCK P. M.

MAY 17 2005

JANET WILLIAMS, CLERK & MASTER
BY Selena Wix

COMPLAINT

I. INTRODUCTION

1. Kevin P. Lavender, Commissioner of the Tennessee Department of Financial Institutions, in his capacity as statutory Commissioner-in-Possession of Sentinel Trust Company ("Sentinel Trust") and Receivership Management, Inc., as appointed Receiver of Sentinel Trust, present this Complaint which sets forth the claims against the named Defendants and asserts a lien *lis pendens* regarding property located within this judicial district on behalf of the Sentinel Trust receivership estate and the claimants to that estate.

II. PARTIES

2. Plaintiff Kevin P. Lavender is the Commissioner of the Tennessee Department of Financial Institutions. He sues in this action in his official capacity as statutory Commissioner-in-Possession over Sentinel Trust and, thus, is located at Tennessee Department of Financial Institutions, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Davidson County,

Tennessee 37219. Commissioner Lavender became statutory Commissioner-in-Possession over Sentinel Trust, pursuant to T.C.A. § 45-2-1501, et seq. on May 18, 2004 and is referred to herein as the Commissioner-in-Possession.¹

3. Plaintiff Receivership Management, Inc. (“RMI”) is a Tennessee corporation with its principal place of business being at 215 Centerview Drive, Suite 133, Brentwood, Williamson County, Tennessee 37027. RMI was appointed, pursuant to T.C.A. § 45-2-1502(b)(2), as Receiver over Sentinel Trust by the Commissioner-in-Possession on May 18, 2004.

4. Defendant Danny N. Bates (“Danny Bates”) is an individual who resides at 205 Bastin Cemetery Road, Hohenwald, Lewis County, Tennessee 38462. Danny Bates was the president and a director of Sentinel Trust prior to the May 18, 2004 institution of the Sentinel Trust receivership. Danny Bates either owns or controls all stock in Sentinel Trust.

5. Defendant Clifton Todd Bates (“Todd Bates”) is an individual who resides at 312 Bastin Cemetery Road, Hohenwald, Lewis County, Tennessee 38462. Todd Bates was the trust officer and a director of Sentinel Trust prior to the May 18, 2004 institution of the Sentinel Trust receivership. Todd Bates is the son of Danny Bates.

6. Defendant Howard H. Cochran (“Howard Cochran”) is an individual who resides at 3636 Mahlon Moore Road, Spring Hill, Maury County, Tennessee 37174. Howard Cochran was a director of Sentinel Trust prior to the May 18, 2004 institution of the Sentinel Trust receivership.

¹ Indeed, in separate proceedings initiated by most of the named Defendants in Davidson County Chancery Court (Sentinel Trust Company v. Lavender, No. 04-1934-I), the Hon. Walter C. Kurtz (sitting by interchange) held that the Commissioner was acting within his statutory power to take possession of Sentinel Trust and that the decision to take possession was not arbitrary and was based on material evidence in the record.

7. Defendant Gary L. O'Brien ("Gary O'Brien") is an individual who resides at 163 Shady Lane, Hohenwald, Lewis County, Tennessee 38462. Gary O'Brien was a director of Sentinel Trust prior to the May 18, 2004 institution of the Sentinel Trust receivership. Gary O'Brien is a relation, through marriage, to Danny Bates.

8. Defendant Deanna June Bates ("June Bates") is an individual who resides at 205 Bastin Cemetery Road, Hohenwald, Lewis County, Tennessee 38462. June Bates is the wife of Danny Bates.

9. Defendant Sentinel Services Corporation ("Sentinel Services") is a Tennessee corporation owned by Danny Bates. The principal place of business of Sentinel Services is 205 Bastin Cemetery Road, Hohenwald, Lewis County, Tennessee 38462.

III. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the causes brought herein pursuant to T.C.A. § 16-11-102, there being no unliquidated damages at issue in this cause.

11. This Court has personal jurisdiction over the named Defendants because all named Defendants reside in Tennessee and, thus, can be bound by an order of this Court.

12. Venue is appropriate in this judicial district pursuant to T.C.A. § 16-11-114(3), T.C.A. § 20-3-101, et seq., T.C.A. § 20-4-101 and/or T.C.A. § 20-4-104, the principal Defendant, as well as other Defendants, residing in this judicial district, a material portion of the actions giving rise to the claims in this matter having occurred in this judicial district, and property subject to a lien *lis pendens* being located in this judicial district.

IV. SUMMARY OF ACTION

13. Sentinel Trust is insolvent and has been placed into receivership and is being liquidated in an action pending before this Court -- In re: Sentinel Trust Company, No. 4781 (“Sentinel Trust Receivership Proceedings” and/or “Sentinel Trust Receivership Court”).

14. Pursuant to T.C.A. § 45-2-1502(b)(2),² Plaintiffs are vested with the full and exclusive power of management and control of Sentinel Trust, including the commencement and pursuit of actions against persons or entities who/which are responsible for damages caused to Sentinel Trust.

15. Plaintiffs have standing, based on the representational position they hold and based upon rulings of the Sentinel Trust Receivership Court, to pursue actions on behalf of aggrieved bondholders, bond issuers and/or bond issue borrowers associated with Sentinel Trust.

16. Plaintiffs also have standing to pursue claims as against the Defendants to the same extent that claims are made against the Sentinel Trust receivership estate by claimants to that estate.

17. The named Defendants, either individually or comprising various groups, have caused damage to Sentinel Trust, the Sentinel Trust receivership estate and its claimants.

18. Various Defendants, as set forth herein, have misappropriated and/or converted fiduciary and/or corporate funds to which a constructive trust and title as to those funds exist in favor of the Sentinel Trust receivership estate and its claimants. Various Defendants have breached fiduciary duties which have caused injury to the Sentinel Trust receivership estate and its claimants. Various Defendants have engaged in fraud and misrepresentation which have

² T.C.A. § 45-2-1502(b)(2), specifically, and T.C.A. § 45-2-1501, et. seq., in general, are applicable to Sentinel Trust pursuant to T.C.A. § 45-1-124(b).

caused injury to the Sentinel Trust receivership estate and its claimants. Various Defendants have engaged in conduct which breached duties owed to the Sentinel Trust by virtue of their positions as directors of the company and which have caused damage to the Sentinel Trust receivership estate and its claimants. Various Defendants have breached contractual duties owed to various Sentinel Trust receivership claimants, on whose behalf the Plaintiffs sue. Various Defendants have been unjustly enriched by receiving and retaining fiduciary and/or corporate funds to which a constructive trust and title as to those funds exist in favor of the Sentinel Trust receivership estate and its claimants. Various Defendants have mismanaged the affairs of Sentinel Trust, causing injury to the Sentinel Trust receivership estate and its claimants. Finally, various Defendants have engaged in the fraudulent transfer of property in an attempt to improperly shield that property from the rightful claims of the Sentinel Trust receivership estate and its claimants.

19. The culpable conduct alleged herein, in general, gravitates towards two timeframes, albeit that some overlap exists. First, from approximately 1996-1999, although concealed from anyone outside of various Defendants, several million dollars of Sentinel Trust fiduciary and corporate funds were used to pay personal expenses and/or were used for the personal enjoyment of various Defendants (e.g., at least \$2 million was expended upon the construction of Danny Bates' Bastin Cemetery Road mansion). From time to time, amounts were deposited by various Defendants back into the Sentinel Trust bank accounts from which the funds had been taken. But, over the course of 1996-1999, the total withdrawals by or on behalf of various Defendants from the Sentinel Trust fiduciary and corporate accounts approximated \$5.7 million, with deposits from or on behalf of the same Defendants back into those accounts approximating only \$530,000. Second, from approximately 1998-1999 until the institution of

the Sentinel Trust receivership on May 18, 2004, and concealed from all bond issuers, borrowers and bondholders, various of the Defendants, in disregard to the duties owed, were responsible for and/or involved in the establishment of a multi-million dollar (approximately \$8 million) shortfall in a Sentinel Trust fiduciary account. Specifically, it is on behalf of the bond issuers, borrowers and bondholders, who/which have an interest in, and a claim concerning, this fiduciary account shortfall, that the Plaintiffs sue and seek judgment against the Defendants.

20. As detailed herein, the Defendants, as individuals and as part of distinct groups, have caused millions of dollars of damage to the Sentinel Trust receivership estate and its claimants.

V. FACTUAL ALLEGATIONS

21. In the mid-1970's, Sentinel Trust was chartered as a for-profit Tennessee corporation with its principal place of business being identified as in Davidson County, Tennessee.

22. In May 2001, Sentinel Trust changed its principal place of business to Hohenwald, Lewis County, Tennessee.

23. Described in general, the business of Sentinel Trust was to serve as indenture trustee regarding municipal private activity bond issues and to serve as paying and transfer agent both for municipal private activity bond issues and for municipal general obligation and revenue bond issues. Private activity bond issues were bonds offered or issued under the name of a municipal entity, but which were funded by a financier or borrower and which were backed by the revenues and assets of the private enterprises at issue. General obligation and revenue bond issues were bonds offered or issued by governmental entities which were backed by the general obligation (e.g., taxing authority) of the governmental issuer itself.

24. The positions of indenture trustee and/or paying and transfer agent are instrumental in the establishment of a municipal bond offering as well as the subsequent sale and purchase of the bonds. Without a trustee and/or paying and transfer agent, a modern-day municipal bond issue would never go to market nor be bought or sold. The proper discharge of the duties of an indenture trustee and/or paying and transfer agent were in connection with and necessary for the purchase and sale of these securities (i.e., the municipal bond offerings).

25. An indenture trustee and/or paying and transfer agent is to fulfill a neutral role amongst the other parties involved in the offering, selling and purchasing of a bond issue -- e.g., the issuer, the financier or borrower and the bondholder. An indenture trustee and/or paying and transfer agent is/are called upon to perform many tasks and discharge many duties in an objective fashion regarding the bond issues. These tasks and duties include, but are not limited to, the receiving, retaining and paying of monies (representing bond issue principal and interest payments) from a bond issuer or borrower to the bondholders, and the receiving and retaining (and paying when appropriate) of money from a bond issuer or borrower to establish reserve funds for various contingencies such as debt service, operation and maintenance, etc.

26. The position of indenture trustee and/or paying and transfer agent, therefore, is a fiduciary position wherein the trustee and/or paying and transfer agent owes fiduciary duties to other parties to a bond issue, at least, but not exclusively, in regard to the proper receiving, retaining and paying of monies it receives from, and holds in trust for, bond issuers and/or borrowers.

27. Prior to July 1, 1999, Tennessee trust companies, like Sentinel Trust, were not subject to regulation by the Tennessee Department of Financial Institutions. Therefore, prior to July 1, 1999, the operations of Sentinel Trust, as directed and controlled by Danny Bates and,

perhaps others, were controlled by the general corporate and trust laws as established in Tennessee.

28. During the time frame 1996 through 1999, payments from bond issues and/or borrowers would be made to Sentinel Trust to be held in trust. Under the direction of Defendant Danny Bates, and, perhaps others, those funds would be deposited in various bank accounts in the name of Sentinel Trust. These payments were made by bond issuers and/or borrowers to fund the payment to bondholders of principal and interest payments and/or to fund other reserves required under the bond issue documents, e.g., debt service reserve, maintenance and operations reserve, etc.

29. The principal and interest payments required to be made by Sentinel Trust, typically, were semi-annual payments. With regard to many, if not most, of the bond issues to which Sentinel Trust was the indenture trustee, the borrowers financing the bond issue and making payment to Sentinel Trust, would pay monthly a percentage of the scheduled semi-annual payment, in advance, to Sentinel Trust to be held in trust for the later scheduled semi-annual payment.

30. These advance payments would result in borrowers placing with Sentinel Trust funds aggregating to the millions of dollars, and at times, tens of millions of dollars. All of those funds were to be held in trust for future payments owed or called for on the various bond issues.

31. Under the direction of Defendant Danny Bates, and, perhaps others, the monies sent to Sentinel Trust were placed in bank accounts in the name of Sentinel Trust. All of these bank accounts were controlled and supervised by Defendant Danny Bates.

32. Deposits and disbursements of funds received from the bond issuers or borrowers, as directed by Defendant Danny Bates, did not follow a uniform pattern. For example, amounts

received from a particular bond issuer or borrower would not be deposited uniformly in the same bank account. Likewise, payments to bondholders of a particular bond issue would not come uniformly from the same account.

33. The Sentinel Trust bank accounts were opened by Defendant Danny Bates in a variety of ways, some of which were opened as corporate accounts, and others of which were opened for trust activity. Over the course of time, the functions of the various bank accounts (e.g., corporate operations or trust operations) changed, again under the direction, supervision and manipulation of Defendant Danny Bates.

34. These efforts were undertaken by Defendant Danny Bates for no apparent business reason and can reasonably be inferred to have been done by Defendant Danny Bates, and, perhaps others, to create confusion as to the commingling of funds amongst the Sentinel Trust bank accounts so as to allow the misdirection and misappropriation of both corporate and trust funds to evade detection.

35. Sentinel Services also had bank accounts in its name which were controlled, supervised and manipulated by Defendant Danny Bates. Deposits, withdrawals and transfers of funds in and out of the Sentinel Services accounts to and from the Sentinel Trust accounts occurred. This further confused deposits and disbursements effected by Defendant Danny Bates amongst all of these bank accounts and further allowed the misappropriation of Sentinel Trust funds to occur and to evade detection.

36. Throughout the timeframe of 1996-1999, the Sentinel Trust bank accounts were used by Defendant Danny Bates as his own personal accounts. As a result, either through intentional abuse or negligent mismanagement, both of which are alleged, millions of dollars that had been received by Sentinel Trust from bond issuers or borrowers, to be held in trust for

payment to bondholders, were misappropriated or misdirected by Defendant Danny Bates and others with the manifest intent that the funds be used to benefit themselves and others and to the injury of the bond issuers, borrowers and bondholders who are claimants to the Sentinel Trust receivership estate.

37. The scope and extent of the misappropriation and misdirection of both Sentinel Trust corporate funds and trust funds were wide-ranging. During the 1996-1999 timeframe, approximately \$2 million of Sentinel Trust corporate funds and trust funds were used to construct Defendant Danny Bates' residence in Lewis County, Tennessee with, at least, an additional approximately \$150,000 of those funds spent on furnishings for that residence.

38. Approximately \$65,000 of disbursements from Sentinel Trust's corporate and/or trust bank accounts went for the construction of an indoor-outdoor swimming pool at the Bates residence. Approximately \$150,000 of disbursements from the Sentinel Trust's corporate and/or trust bank accounts were used to purchase automobiles from automobile dealerships in the Nashville area for Defendant Danny Bates and his family members.

39. Tens of thousands of dollars were spent on carpeting the Bates residence; tens of thousands of dollars were spent on road construction and maintenance as well as the digging of ponds at the Bates residence -- the source of these funds, again, being the corporate and/or trust bank accounts of Sentinel Trust.

40. Indeed, as further example of the use of the Sentinel Trust bank accounts as Defendant Danny Bates' own personal accounts, from 1996-1999 hundreds of dollars were spent from these accounts to pay various speeding citations received by Bates family members, thousands of dollars were spent from these accounts for payment of college tuition and fashion

modeling school for various Bates family members, and tens of thousands of dollars were, upon information and belief, used to pay personal credit card bills and to pay off personal loans.

41. Additionally, over the time period 1996-1999, literally hundreds of thousands of dollars were paid from the Sentinel Trust corporate and trust bank accounts to address other expenses of a personal nature for various of the Bates family members.

42. Aside from disbursement from the Sentinel Trust bank accounts addressing personal obligations and expenses of various of the Bates family members, during this same timeframe of 1996-1999, significant amounts of money from these accounts were disbursed directly to Bates family members.

43. Sentinel Trust records, available to the Commissioner-in-Possession and the Receiver only since the May 18, 2004 institution of the Sentinel Trust receivership, indicate that during the 1996-1999 timeframe, Defendant Danny Bates made direct withdrawals from the Sentinel Trust bank accounts to himself of approximately \$610,000, whereas over the same timeframe he paid back to those accounts only approximately \$380,000. Defendant June Bates made direct withdrawals of approximately \$74,000 with no evidence of any payment back into those accounts. Defendant Todd Bates made withdrawals directly to him totaling approximately \$52,000, whereas the records indicate that he paid back only approximately \$10,000.

44. These net direct payments to Bates family members were not in the nature of salary, but, rather, were in the nature of consciously misappropriated or negligently misdirected Sentinel Trust corporate or fiduciary funds.

45. Defendant Danny Bates controlled the disbursements made from the Sentinel Trust corporate and fiduciary accounts. He knew, indeed, he directed, that millions of dollars of

Sentinel Trust corporate and fiduciary assets were spent on matters related solely to the benefit and enjoyment of himself and his family members.

46. Defendant Todd Bates and Defendant June Bates either knew or should have known that expenditures made for their personal benefit and enjoyment were being made from Sentinel Trust corporate and fiduciary accounts.

47. The circumstances of the misappropriation and/or misdirection of Sentinel Trust corporate and fiduciary funds were not disclosed and were otherwise concealed by Defendant Danny Bates and, perhaps others.

48. Those who had knowledge or should have had knowledge of the misappropriation and/or misdirection of funds from Sentinel Trust corporate and fiduciary funds were either involved in the misappropriation and/or misdirection or were dominated or controlled by those involved in the misappropriation and/or misdirection.

49. Bond issuers and/or borrowers, who were sending funds to Sentinel Trust to be held in trust for payment on outstanding bond issues, were unaware that portions of those funds were being misappropriated and/or misdirected for the personal use and enjoyment of Defendant Bates and his family. Because Sentinel Trust stood in a fiduciary relationship with those bond issuers and/or borrowers, individuals such as Defendant Danny Bates had a duty to disclose that information to those bond issuers and/or borrowers. Defendant Danny Bates did not disclose to the bond issuers and/or borrowers that millions of dollars had been or would be withdrawn from Sentinel Trust corporate and fiduciary accounts for his and his family's personal use because Defendant Danny Bates knew that disclosure of such would have caused the bond issuers and/or borrowers to seek a replacement trustee/paying and transfer agent or to refrain from using Sentinel Trust as trustee/paying and transfer agent on future bond issues. Indeed, had the bond

issuers and borrowers known of Defendant Danny Bates' use of Sentinel Trust corporate and trust funds, as described herein, they would have ceased doing business with Sentinel Trust.

50. Had Defendant Bates disclosed the misappropriation and/or misdirection of corporate and fiduciary funds to the bond issuers and/or borrowers back in the 1996-1999 timeframe, the business of Sentinel Trust would not have continued, or, if it had continued, it would have done so in an accountable fashion such that the insolvency of Sentinel Trust either would not have occurred or would not have deepened to its present state. Thus, the present damage to the Sentinel Trust receivership estate and its claimants would not have occurred or would not be as great as it presently is.

51. One result of the misappropriation and/or misdirection during 1996-1999 of millions of dollars from the Sentinel Trust corporate and fiduciary funds was that the financial soundness of Sentinel Trust was compromised and that the dependence of Sentinel Trust upon the receipt of advance payments from bond issuers and borrowers and the pressure to use those advanced funds to make scheduled payments and/or address expenses on other non-related defaulted bond issues increased.

52. The evidence which the Commissioner-in-Possession and Receiver have recently discovered concerning misappropriation and/or misdirection of Sentinel Trust corporate and trust funds, indicates that, starting in or around 2000, the instances of that improper and illegal conduct wanes. However, the instances of misappropriation and/or misdirection of funds do not cease (for example, over the calendar year 2001, Defendant Todd Bates withdrew, via handwritten checks from a Sentinel Trust fiduciary account, a total of approximately \$20,000 for personal use, most of which appears to have been used to pay for improvements to his residence and in or around February 2001, Defendant Danny Bates directed that approximately \$575,000

from a Sentinel Trust fiduciary account to be used to pay a settlement of a lawsuit against the company).

53. In the 1998-1999 timeframe and thereafter, numerous of the private activity municipal bond issues had defaulted, were defaulting or were about to default on payment obligations. As indenture trustee to those bond issues, Sentinel Trust was to protect, recover and liquidate the collateral that existed and stood behind the bond issue for the benefit of the bondholders of the particular defaulted bond issue.

54. To fund the efforts to protect and recover on defaulted bond collateral, Defendant Danny Bates had numerous options. For example, he could have requested that sums be contributed by the bondholders to fund the recovery effort, or he could have borrowed money from, or established a line of credit with, a bank with the collateral being pursued as security to the transaction, or he could have advanced Sentinel Trust corporate funds to pay for the pursuit of the defaulted bond issue collateral. The one thing that Defendant Danny Bates could not do was to use funds tendered to Sentinel Trust from other bond issuers or borrowers, which were to be held in trust for payments on those other bond issues, to pay for the unrelated defaulted bond recovery efforts. Unfortunately for the bond issuers, borrowers and bondholders, to whom he owed fiduciary duties, that is exactly what Defendant Danny Bates did.

55. By this time, and, indeed, prior to the 1998-1999 timeframe, Sentinel Trust was utilizing a SunTrust bank account as the account primarily used to address the trust and fiduciary operations of the company. The SunTrust account was an account where funds tendered, in trust, to Sentinel Trust were commingled and/or pooled with other funds (hereinafter referred to as the "Pooled Fiduciary Account").

56. The Pooled Fiduciary Account was not a custodial account. Rather, it was a simple checking account that was set up and controlled by Defendant Danny Bates and which was used, like all other Sentinel Trust and Sentinel Services bank accounts, to address all matters, both business and personal, as Danny Bates saw fit.

57. The monies deposited into the Pooled Fiduciary Account were pooled and commingled regardless of the reason why the money was deposited. Money held in trust for the scheduled future payments on a particular bond issue was commingled with money held in trust for payment on another bond issue which was, in turn, commingled with money to be held in trust for the debt service reserve of yet another bond issue, all of which were, in turn, commingled with proceeds from the sale of collateral on a defaulted bond held in trust to be paid to bondholders of the defaulted bond issue, and so on.

58. The entry and exit of funds into and from the Pooled Fiduciary Account were recorded in accounting systems at Sentinel Trust which were controlled and manipulated by Defendant Danny Bates.

59. Defendant Danny Bates directed a scheme by which funds received from bond issuers or borrowers, that were to be held in trust for future scheduled payments on a particular bond, were being used to fund the expenses incurred on unrelated defaulted bond issues. Indeed, because the expenses incurred in defaulted bond contexts were paid by Defendant Danny Bates out of the Pooled Fiduciary Account (which contained only commingled funds), it is difficult, if not impossible, to discern which monies, that had otherwise been tendered to Sentinel Trust to be held in trust, had been or were being used to fund any particular defaulted bond recovery effort. The pooled, commingled nature of the Pooled Fiduciary Account made it easier for Defendant Danny Bates to conduct and conceal this scheme.

60. What is certain, however, is that in many, if not most, defaulted bond issue contexts, the expenses approved and paid by Defendant Danny Bates quickly exceeded the reserves noted in the accounting system as being available in the defaulted bond issue's name. Indeed, by the time of a bond's default, there was typically little, if any, funds remaining in the debt service reserve account (and other related accounts) for that particular bond issue.

61. Therefore, in many, if not most, defaulted bond issue contexts, Defendant Danny Bates would use funds received from other bond issuers or borrowers, which were supposed to be held in trust, to fund recovery efforts on those unrelated defaulted bond issues.

62. The amounts that were taken by Defendant Danny Bates from the "accounts" of unrelated bond issues to fund defaulted bond recoveries would aggregate into the hundreds of thousands of dollars and were noted as "overdrafts" in relation to the defaulted bond issue "account." The "accounts," however, only existed on paper in the Sentinel Trust accounting systems controlled by Defendant Danny Bates. Again, all of the funds that are at issue were held in and paid from the commingled Pooled Fiduciary Account controlled by Defendant Danny Bates, and, as set forth earlier, the Pooled Fiduciary Account consisted mainly of the advance payments from bond issuers and borrowers that were supposed to be held in trust.

63. These "overdraft" amounts paid in relation to the defaulted bond issues were taken from the "accounts" of unrelated bond issues without the knowledge or consent of the bond issuers, borrowers or bondholders.

64. The use of the funds deposited by issuers and borrowers, in trust, to Sentinel Trust to fund defaulted bond recovery efforts on unrelated bond issues was in violation of the fiduciary duties owed by Defendant Danny Bates to the bond issuers, borrowers and bondholders of the unrelated bond issues whose funds were misused to fund defaulted bond recovery efforts.

65. The use of the funds deposited by bond issuers and borrowers, in trust, to fund defaulted bond recovery efforts on unrelated bond issues was in breach of the contractual agreements Sentinel Trust had with the bond issuers and borrowers, including, but not limited to, provisions restricting the use of amounts tendered to Sentinel Trust and provisions restricting how the amounts tendered could be invested.

66. Defendant Danny Bates has knowingly engaged in this scheme and has admitted that, at or near the April-May 2004 timeframe, there was an approximate \$7.25 million shortfall in the Pooled Fiduciary Account.

67. Defendant Danny Bates concealed this misuse of fiduciary funds from the bond issuers, borrowers and bondholders (i.e., the individuals and entities who are claimants to the Sentinel Trust receivership estate).

68. Defendant Danny Bates did not disclose to any bond issuer, borrower or bondholder (with whom he was in a fiduciary relationship), that Sentinel Trust was retaining the funds forwarded to Sentinel Trust in a pooled account wherein the funds would be commingled and subjected to being withdrawn and misused for purposes unrelated to the bond issue for which the funds were deposited. Defendant Danny Bates did not disclose to any bond issuer, borrower or bondholder that he was using funds, tendered to Sentinel Trust to be held in trust for payments on one bond issue, to pay for the expenses incurred in pursuing recovery of collateral relating to an unrelated defaulted bond issue.

69. Had Defendant Danny Bates disclosed such information, which he was under a duty to do, the bond issues or borrowers would have replaced Sentinel Trust as trustee/paying and transfer agent or would have refrained from using Sentinel Trust as trustee/paying and transfer agent on future bond issues.

70. Had Defendant Danny Bates disclosed the commingling and misuse of fiduciary funds to bond issuers and/or borrowers at a time when he was first utilizing that practice, the business of Sentinel Trust would not have continued, or, if it had continued, it would have done so in an accountable fashion such that the insolvency of Sentinel Trust would either not have occurred or would not have deepened to its present state. Thus, the damage to the Sentinel Trust receivership estate and its claimants would not have occurred or would not be as great as it presently is.

71. Based upon investigations by the Commissioner-in-Possession and Receiver, the shortfall as to the Pooled Fiduciary Account -- that is, the amount of "deposits" that should be in that account in comparison to what money was in that account at the May 18, 2004 institution of the Sentinel Trust receivership -- is approximately \$8 million.

72. Defendant Danny Bates, throughout the entire timeframe that the shortfall in the Pooled Fiduciary Account was developing and increasing, was the President of Sentinel Trust (and since December 1999 was a director of Sentinel Trust).³ He had control over the deposits into and withdrawals from the Pooled Fiduciary Account and had control over the accounting systems at Sentinel Trust. He knew of, authorized, directed and/or made all payments from the Pooled Fiduciary Account for funding defaulted bond recovery efforts, and he knew the payments made for such recovery efforts were being made from amounts held, in trust, on behalf of the bond issuers or borrowers of unrelated bond issues. Defendant Danny Bates knew, or should have known, that the practice he was engaging in was unlawful, deceitful, in breach of duties he owed to Sentinel Trust and the bond issuers, borrowers and bondholders with whom he

³ Prior to December 1999, Sentinel Trust had no Board of Directors.

had a fiduciary relationship, and in breach of contractual obligations owed to the bond issuers and borrowers.

73. Defendants Todd Bates, Howard Cochran and Gary O'Brien were, since December 1999, members of the Sentinel Trust Board of Directors. Defendant Todd Bates was also the Trust Officer for Sentinel Trust. Those individuals held those positions during the timeframe that the shortfall in the Pooled Fiduciary Account developed and increased. They either knew, or should have known, about the practice of Defendant Danny Bates of commingling trust funds and misusing funds tendered to be held in trust on behalf of one bond issue to pay for the expenses of pursuing collateral for an unrelated defaulted bond issue.

74. The circumstances herein described led to the May 18, 2004 takeover of Sentinel Trust by the Commissioner of the Tennessee Department of Financial Institutions and the appointment of Receivership Management, Inc. as Receiver over Sentinel Trust on that same day.

75. Just prior to the May 18, 2004 institution of the Sentinel Trust receivership, and during a time when it was reasonable for Defendant Danny Bates to know or suspect that he would be pursued in relation to certain aspects of his operation of Sentinel Trust, he quitclaimed all of his interest in the 205 Bastin Cemetery Road mansion to his wife, Defendant June Bates -- the quitclaim deed being dated April 23, 2004.

76. Upon information and belief, Defendant Danny Bates has been involved in other transfers of property, both before and after the institution of the Sentinel Trust receivership, concerning property which was paid for from funds belonging to Sentinel Trust or from funds held by Sentinel Trust on behalf of bond issuers, borrowers or bondholders. Also, on information and belief, Defendant Danny Bates and Defendant Sentinel Services have been

involved in the transfer of property which was purchased with funds originating with Sentinel Trust. Moreover, Sentinel Services has been unjustly enriched through the purchase and/or sale of properties and/or the receipt of funds which, upon information and belief, originated from either corporate or fiduciary funds of Sentinel Trust.

77. As a result of the Sentinel Trust receivership, it is clear that there will be claims aggregating in the millions of dollars against the Sentinel Trust receivership estate, in general, and against the shortfall in the Pooled Fiduciary Account in particular. It is anticipated that claims against the Sentinel Trust receivership estate could aggregate to between \$10-\$11 million.⁴ There are not presently enough assets to address all of the expected claims. Pursuit of this action to judgment and collection of that judgment will yield additional funds back into the Sentinel Trust receivership estate for the addressing of claims against it.

78. Based upon information discerned by the Commissioner-in-Possession and Receiver since the May 18, 2004 institution of the Sentinel Trust receivership, there will be a variety of claimants filing against the Sentinel Trust receivership estate. The largest claimants will be the bond issuers, borrowers and bondholders whose money was supposed to have been held in trust in the Pooled Fiduciary Account. It is anticipated that the bulk of the \$10-\$11 million in claims will be claims against the shortfall in the Pooled Fiduciary Account. Presently, there is approximately \$2.5 million in the Pooled Fiduciary Account, but it is not expected that recovery efforts outside of this action will result in the Pooled Fiduciary Account having more than approximately \$4 million.

79. The Commissioner-in-Possession and Receiver have been in communication with most of the bond issuers, borrowers and others who will be material claimants to the Pooled

⁴ The deadline for submitting claims to the Receiver is the end of July 2005.

Fiduciary Account shortfall and have been in communication with the successor trustees which represent all of the bondholders who hold bonds, the funds of which were supposed to be in the Pooled Fiduciary Account. The Commissioner-in-Possession and Receiver have received the approval of all of these entities to pursue this action on their behalf.

80. As Commissioner-in-Possession and as Receiver, the Plaintiffs to this action have assumed total management and control over Sentinel Trust which includes pursuit of causes of action that can be brought in the name of Sentinel Trust and/or which represent efforts to recover assets for the benefit of the Sentinel Trust receivership estate and its claimants. As Commissioner-in-Possession and as Receiver, the Plaintiffs stand in the shoes of Sentinel Trust in regard to representing the interests of bondholders and/or bond issuers and borrowers, vis-à-vis the type claims that are brought herein.

VI. THEORIES OF RECOVERY

(a) Conversion by Defendants Danny Bates, Todd Bates and June Bates -- Imposition of a Constructive Trust/Lien *Lis Pendens*

81. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

82. The actions of Defendants Danny Bates, Todd Bates and June Bates constitute conversion of assets held in trust by Sentinel Trust as well as Sentinel Trust corporate assets. These Defendants have assumed and exercised control and asserted ownership over fiduciary assets held by Sentinel Trust as well as assets owned by Sentinel Trust, the primary asset so converted being cash which was then used to pay for goods or improvements that have been, and continue to be, used for their own enjoyment and personal benefit.

83. The acts of these Defendants were unauthorized and otherwise inequitable and contrary to law.

84. The acts of conversion have proximately caused damage to Sentinel Trust, the Sentinel Trust receivership estate and its claimants, recovery of which is being pursued by the Commissioner-in-Possession and Receiver, who stand in the shoes of Sentinel Trust and its claimants.

85. The amount of damages is equal to the amount of money misappropriated from Sentinel Trust by each Defendant and, in the aggregate, is in the approximate amount of \$5 million.

86. Due to the wrongful acts of these Defendants in converting assets of Sentinel Trust for their own benefit and enjoyment, equity and good conscious dictates that a constructive trust, in favor of the Sentinel Trust receivership estate and its claimants, be imposed as to all assets so converted or as to the assets purchased and/or improved through the use of the monies converted from Sentinel Trust and that title to those assets be placed with the Plaintiffs. For the same reason, an abstract asserting a lien *lis pendens* upon the 205 Bastin Cemetery Road mansion will be filed in the lien book or other appropriate record at the Lewis County, Tennessee Register of Deeds Office, pursuant to T.C.A. § 20-3-101, *et seq.*

(b) Breach of Fiduciary Duties as Against Defendant Danny Bates

87. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

88. As the individual who controlled the activities of Sentinel Trust, Defendant Danny Bates held a fiduciary position and relationship with bond issuers, borrowers and bondholders.

89. As a fiduciary for these individuals and/or companies, Defendant Danny Bates had a duty to act with fidelity toward their interests, to act with their best interests in mind, and to affirmatively disclose to them matters that impacted upon their interests.

90. Defendant Danny Bates breached these duties by, amongst other matters, converting corporate and fiduciary assets from Sentinel Trust for his and his family's own personal use and enjoyment and by using funds placed in trust with Sentinel Trust to fund pursuit of unrelated defaulted bond collateral or by otherwise using those deposited funds in any matter contrary to the purpose for which the funds were placed in trust with Sentinel Trust.

91. Defendant Danny Bates has breached fiduciary duties by not disclosing to bond issuers, borrowers and/or bondholders his acts of conversion and mismanagement of fiduciary funds or by otherwise not disclosing the conflict of interest inherent in being a fiduciary to an individual or company while at the same time misappropriating or misdirecting the use of the funds that those individuals or companies had placed in trust with him.

92. Defendant Danny Bates has, thus, breached fiduciary duties in violation of Tennessee statutory law (e.g., T.C.A. § 35-2-101, et seq.) and the common law of Tennessee.

93. Because the Commissioner-in-Possession and Receiver are charged with advocating and pursuing the interests of injured bond issuers, borrowers and bondholders, the breaches and violations of the fiduciary duties alleged against Defendant Danny Bates are matters to be pursued by these Plaintiffs on behalf of the Sentinel Trust receivership estate and its claimants.

94. Because the Commissioner-in-Possession and Receiver are charged with addressing the claims brought by all who will make claims against the Sentinel Trust receivership estate, and because it is known that significant claims against that receivership estate will be made based upon damages caused by Defendant Danny Bates' breaches of fiduciary duties, the breaches and violations of the fiduciary duties alleged against Defendant

Danny Bates are matters to be pursued by these Plaintiffs on behalf of the Sentinel Trust receivership estate and its claimants.

95. The breaches of fiduciary duties by Defendant Danny Bates have proximately caused damage to the Sentinel Trust receivership estate and its claimants in an amount to be proven at the trial of this cause, but in an approximate amount of not less than \$8 million.

96. The breaches of fiduciary duties by Defendant Danny Bates have further caused the insolvency of Sentinel Trust and/or the deepening of the insolvency of Sentinel Trust to its present state, all of which have caused the damages to the Sentinel Trust receivership estate and its claimants in an amount to be proven at the trial of this cause.

(c) **Fraud and Misrepresentation as Against Defendant Danny Bates**

97. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

98. In his capacity as the person who controlled the operations of Sentinel Trust, Defendant Danny Bates held a fiduciary position and relationship with bond issuers, borrowers and bondholders.

99. As a fiduciary, Defendant Danny Bates had a duty to disclose to the bond issuers, borrowers and bondholders information that impacted upon those individuals or entities.

100. Defendant Danny Bates engaged in misrepresentation and fraud by not disclosing to the bond issuers, borrowers and bondholders that millions of dollars of Sentinel Trust's corporate and fiduciary assets had been converted and used for his and his family's enjoyment and benefit and/or that millions of dollars, that had been tendered to Sentinel Trust to be held in trust, had been misused to fund pursuit of collateral in relation to unrelated defaulted bond issues.

101. The failure to disclose these material matters caused reasonable reliance by the bond issuers, borrowers and bondholders as to the soundness of Sentinel Trust such that they

continued to use Sentinel Trust as indenture trustee and/or paying and transfer agent to the bond issues in which they were involved.

102. Had the bond issuers, borrowers and bondholders known of the matters alleged herein, Sentinel Trust would not have continued in business or would have had to conduct and manage its business in a proper, accountable fashion, which, in turn, would have avoided the insolvency it now finds itself in or which, in turn, would have lessened the severity of that insolvency.

103. Because the Commissioner-in-Possession and the Receiver are charged with advocating and pursuing the interests of injured bond issuers, borrowers and bondholders, the misrepresentations alleged against Defendant Danny Bates are matters to be pursued by these Plaintiffs on behalf of the Sentinel Trust receivership estate and its claimants.

104. Because the Commissioner-in-Possession and Receiver are charged with addressing the claims brought by all who will make claims against the Sentinel Trust receivership estate, and because it is known that significant claims against that receivership estate will be made based upon damages caused by Defendant Danny Bates' misrepresentation, those misrepresentations alleged against Defendant Danny Bates are matters to be pursued by these Plaintiffs on behalf of the Sentinel Trust receivership estate and its claimants.

105. The misrepresentations of Defendant Danny Bates have proximately caused damage to the Sentinel Trust receivership estate and its claimants in an amount to be proven at the trial of this cause, but in an approximate amount of \$8 million. The egregious nature of this fraud also warrants imposition of punitive damages against Defendant Danny Bates in an amount to be determined at the trial of this cause.

106. The misrepresentations of Defendant Danny Bates have further caused the insolvency of Sentinel Trust and/or the deepening of the insolvency of Sentinel Trust to its present state, all of which have caused damages to the Sentinel Trust receivership estate and its claimants in an amount to be proven at the trial of this cause.

(d) **Breach of Directors' Duties as Against Defendants Danny Bates, Todd Bates, Howard Cochran and Gary O'Brien**

107. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

108. At all relevant times, Defendants Danny Bates, Todd Bates, Howard Cochran and Gary O'Brien were directors of Sentinel Trust.

109. In discharge of their duties as directors of Sentinel Trust, these Defendants were to act in good faith and with the care an ordinarily prudent person, in a like position, would exercise under similar circumstances.

110. These Defendants either knew, or should have known, of the conversion and the misappropriation of fiduciary assets held in trust by Sentinel Trust and/or Sentinel Trust corporate assets for the personal use and enjoyment of the Bates family and/or of the misuse of trust funds to pay for the pursuit of collateral in relation to unrelated defaulted bond issues.

111. These Defendants were in violation of the duties owed to Sentinel Trust by not acting upon such knowledge or by being negligent in not knowing about such matters.

112. Therefore, these Defendants have breached the duties incumbent upon them as directors of Sentinel Trust pursuant to Tennessee statutory law, including, but not limited to, T.C.A. § 48-18-301, et seq. and T.C.A. § 48-18-401, et seq., as well as the common law of Tennessee.

113. The breach of these duties has caused damage to the Sentinel Trust receivership estate and its claimants in an amount to be proven at trial, but in an approximate amount of \$8 million.

(e) **Breach of Contract as Against Defendant Danny Bates**

114. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

115. Contractual agreements existed between Sentinel Trust and the bond issuers/borrowers. The contracts are, by and large, form agreements with standard provisions. In related proceedings before the Davidson County, Tennessee Chancery Court, in Sentinel Trust Company v. Lavender, No. 04-1934-I, Defendant Danny Bates has admitted that the document attached as **Exhibit A** is a typical example of such a contract and contains the standard provisions agreed to between Sentinel Trust and the bond issuers/borrowers.

116. All of the bond issuers/borrowers who/which are, or are expected to be, claimants in the Sentinel Trust receivership estate had entered into contracts with Sentinel Trust with the similar standard provisions as those contained in **Exhibit A**.

117. The actions and omissions of Defendant Danny Bates have materially breached the provisions of the contracts entered into between the bond issuers/borrowers and Sentinel Trust, including, but not limited to, contractual provisions which limit the use of funds tendered from the bond issuers/borrowers and provisions which limit how the funds tendered from the bond issuers/borrowers could be invested.

118. As set forth herein, the Plaintiffs have standing to pursue these claims of breach of contract on behalf of the Sentinel Trust receivership estate and the bond issuers/borrowers who/which are claimants to the Sentinel Trust receivership estate.

119. The breach of these contractual provisions has caused damage to the Sentinel Trust receivership estate and its claimants in an amount to be proven at trial, but in an approximate amount of \$8 million.

(f) **Unjust Enrichment and/or Money Had and Received as Against Defendants Danny Bates, Todd Bates, June Bates and Sentinel Services -- Imposition of Constructive Trust/Lien Lis Pendens**

120. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

121. The amounts received by Defendants Danny Bates, Todd Bates and June Bates from the Sentinel Trust corporate and fiduciary bank accounts, whether received directly in the form of cash or whether received through the payment for services or goods that have benefited and/or have been enjoyed by these Defendants, has resulted in these Defendants being unjustly enriched. Additionally, upon information and belief, Sentinel Services received amounts from the Sentinel Trust corporate and fiduciary bank accounts, without justification and/or otherwise improperly, and, thus, has been unjustly enriched.

122. In equity, the monies received, and the matters and objects paid for through use of monies received, belong to the Sentinel Trust receivership estate and its claimants.

123. If the Sentinel Trust receivership estate does not receive those monies and/or objects purchased with those monies, then these Defendants will continue to be unjustly enriched, and the Sentinel Trust receivership estate is damaged to the extent of that enrichment in an amount to be proven at trial, but in an approximate amount of \$5 million.

124. Because of the unjust enrichment and the improper receipt, retention and use of monies belonging to Sentinel Trust, equity and good conscience dictate that a constructive trust be imposed upon all assets of these Defendants that relate to the unjust enrichment or receipt of the monies at issue from Sentinel Trust and that title to those assets be placed with the Plaintiffs.

For the same reasons, an abstract asserting a lien *lis pendens* upon the 205 Bastin Cemetery Road mansion will be filed in the lien book or other appropriate record at the Lewis County, Tennessee Register of Deeds Office, pursuant to T.C.A. § 20-3-101, et seq.

(g) **Negligent Mismanagement as Against Defendant Danny Bates**

125. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

126. As President, and otherwise the person who controlled the operations of Sentinel Trust, Defendant Danny Bates owed to Sentinel Trust the duty to manage the affairs of the company in a competent fashion.

127. Defendant Danny Bates has breached that duty, and that breach has caused damages to the Sentinel Trust receivership estate and its claimants and also has resulted in the deepening of Sentinel Trust's insolvency. The amount of damages will be subject to proof at the trial of this cause, but in no event less than approximately \$8 million.

(h) **Fraudulent Transfer as Against Defendants Danny Bates, June Bates and Sentinel Services**

128. Plaintiffs incorporate ¶¶ 1-80 as set forth herein.

129. The effort of Defendants Danny Bates and June Bates in the transfer of ownership interest in the 205 Bastin Cemetery Road mansion is in violation of T.C.A. § 66-3-301, et seq. and the common law of Tennessee which prohibit the fraudulent transfer of property to defeat, frustrate or hinder claimants' rights to that property.

130. Upon information and belief, transfers of property have occurred involving Defendant Danny Bates and/or Defendant Sentinel Services which are also in violation of T.C.A. § 66-3-301, et seq. and the common law of Tennessee which prohibit the fraudulent transfer of property to defeat, frustrate or hinder claimants' rights to that property.

131. The Sentinel Trust receivership and its claimants are claimants, through constructive trust or otherwise, to the 205 Bastin Cemetery Road property and any other property which was purchased using Sentinel Trust fiduciary or corporate funds.

132. As set forth herein, the Plaintiffs have standing to pursue these claims of fraudulent transfer on behalf of the Sentinel Trust receivership estate and the claimants to that estate.

133. The fraudulent transfers alleged herein were wrongful and have caused damages to the Sentinel Trust receivership estate and its claimants in an amount to be proven at trial, but in an amount equal to the value of the property fraudulently transferred.

134. Plaintiffs further request the setting aside of all transfers of property shown to be in violation of T.C.A. § 66-3-301, et seq. and/or the common law of Tennessee. An abstract asserting a lien *lis pendens* upon the 205 Bastin Cemetery Road mansion will be filed in the lien book or other appropriate record at the Lewis County, Tennessee Register of Deeds Office, pursuant to T.C.A. § 20-3-101, et seq.

VII. PRAYER FOR RELIEF

Therefore, in consideration of the foregoing, Plaintiffs pray for the following relief:

(a) a finding of liability as against each Defendant on each claim brought against him, her or it;

(b) a monetary judgment awarded against each Defendant consistent with the proof at trial, but in no event less than the aggregate amount of \$8 million;

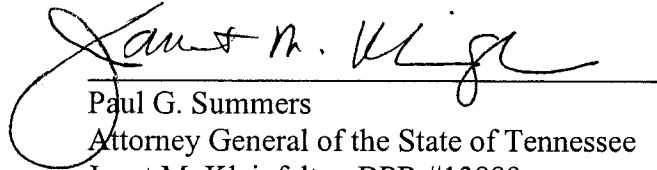
(c) a judgment imposing a constructive trust on all assets of Defendants Danny Bates, Todd Bates, June Bates and Sentinel Services which evidence or relate to their misappropriation, conversion, unjust enrichment or fraudulent transfer of Sentinel Trust corporate and/or fiduciary assets;

(d) a judgment setting aside all transfers of property which was fraudulently transferred by Defendant Danny Bates, June Bates and/or Sentinel Services;

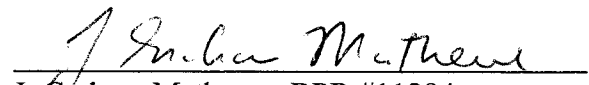
(e) a judgment enforcing any lien *lis pendens* filed regarding property in conjunction with this case;

(f) an award of punitive damages as against Defendant Danny Bates consistent with his net worth; and

(g) all other relief as warranted by equity and justice.


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